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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1469

AMOCO PRODUCTION COMPANY,
Petitioner,

versus

MIKE HOOKS, INC., ET AL,
Respondent.

AUSTRAL OIL COMPANY,
Petitioner,

versus

MIKE HOOKS, INC., ET AL,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1974

No.

AMOCO PRODUCTION COMPANY,
Petitioner,

versus

MIKE HOOKS, INC., ET AL,
Respondent.

AUSTRAL OIL COMPANY,
Petitioner,

versus

MIKE HOOKS, INC., ET AL,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

The petition of Amoco Production Company and Austral Oil Company that a writ of certiorari issue to review the judgment of the United States Court of

Appeals for the Fifth Circuit entered in this proceeding on March 7, 1975.

I.

OPINIONS BELOW

The unreported opinions of the Court of Appeals are reproduced in Appendices A and B to this petition. The order of the Court of Appeals denying Petitioners' application for rehearing is reproduced in Appendix C to this petition. The opinion of the District Court granting a motion for summary judgment is reproduced in Appendices D and E to this petition.

II.

JURISDICTION

(1) The judgment of the Court of Appeals was entered on March 7, 1975.

(2) On March 25, 1975, the Fifth Circuit Court of Appeals granted Applicants' motion for an extension of time to file their petition for rehearing until March 31, 1975. Petitioners' application for rehearing was denied on April 9, 1975.

(3) The jurisdiction of this court is invoked under the provisions of 28 U.S.C.A. 1254(1).

III.

QUESTION PRESENTED FOR REVIEW

The sole question presented by this petition is whether the decision of this court in *Robins Dry Dock & Repair Co.* v. *Flint*, 275 U.S. 303, 48 S. Ct. 134 (1927), produced a rule intended to be applied in all cases to protect a tort feasor from the full responsibility of his negligence merely because of a contractual relationship between the injured plaintiff and a third party whose property is damaged by the tort feasor's negligence.

IV.

STATEMENT OF THE CASE

On November 19, 1972, and for some time prior thereto, Petitioner, Amoco Production Company, owned two natural gas processing plants which were commonly identified as the South Jennings Gas Processing Plant and the South Pecan Lake Gas Processing Plant. In addition, Amoco Production Company and Austral Oil Company, jointly, owned the South Manchester Gas Processing Plant and the South Thornwell Gas Processing Plant.

Natural gas produced from wells owned by Amoco and Austral was processed at these four plants in order to remove valuable liquefiable hydrocarbons (referred to as "raw mix") prior to delivering the gas to market. Additionally, natural gas produced from wells belonging to other parties was processed at

these plants for which Amoco and Austral were paid a processing fee.

The "raw mix" extracted from the natural gas processed at the four plants was delivered to Cities Service Oil Company at the tailgate of each plant and transported to Cities Service's refinery by means of a six inch liquefied petroleum gas pipeline. In accordance with the terms of four separate fractionation agreements, Cities Service processed the "raw mix" at its refinery in Lake Charles, Louisiana, and returned to Amoco and Austral the products fractionated or refined therefrom. Cities Service was paid a fee for transporting and fractionating the "raw mix".

On or about November 19, 1972, the dredge, The Galveston, owned and operated by Mike Hooks, Inc., was engaged in dredging the Calcasieu River and Pass Ship Channel in accordance with a contract between that company and the Department of Army, Corps of Engineers. While thus engaged in dredging operations, the dredge cut the six inch liquefied petroleum pipeline which was used to transport the "raw mix" from Amoco and Austral's processing plants to the refinery. Amoco and Austral allege that this pipeline damage was caused by the negligence of Mike Hooks, Inc. and its employees, and that their loss was the direct result of this negligence.

Immediately after the pipeline was damaged, it became necessary for Amoco and Austral to shut down the four gas processing plants until the pipeline could be repaired. During this time, natural gas produced from wells belonging to Amoco and Austral

which would normally have been processed through these four plants was, of necessity, bypassed around them and sold to the natural gas purchaser in an unprocessed state. This resulted in an irretrievable loss by Amoco of valuable liquefiable hydrocarbons or "raw mix" contained in the unprocessed gas amounting to $73,785.61. Austral suffered a similar loss amounting to $13,066.29. It is for the loss of the "raw mix" or liquefiable hydrocarbons that Amoco and Austral seek recovery from Mike Hooks, Inc. and its insurers.

The trial judge held that the Plaintiffs' action was barred on authority of *Robins Dry Dock & Repair Co.* v. *Flint*, 275 U.S. 303, 48 S. Ct. 134 (1927), and granted the Defendants' motion for summary judgment.

V.

Jurisdiction of the District Court was based on diversity of citizenship (28 U.S.C.A. 1332).

VI.

(1) As applied by the Fifth Circuit, the decision of this court in *Robins*, supra, would arbitrarily bar suit by a party against the negligent tort feasor to recover the value of its property lost or damaged in all cases where a contractual relationship exists between the plaintiff and a third party whose property is damaged by reason of the tort feasor's negligence. Such a view is squarely in conflict with the opinion of the Ninth Circuit in the cases of *Carbone* v. *Ursich, The Del Rio*, 209 F. 2d 178 (1953), and *Union Oil Co. v. Oppen*, 501

F. 2d 558 (1974). It is also in conflict with the decision of this court in *Aktieselskabet Cuzco* v. *The Sucarseco et al*, 294 U.S. 394, 55 S. Ct. 467 (1935). In *Cuzco*, this court was called upon to decide whether owners of cargo shipped on a vessel which collided with the defendants' vessel could recover for their general average contribution paid pursuant to a "*Jason Clause*" in the bill of lading. This court held that they could, rejecting the rule of *Robins* and recognizing that their right of action was occasioned by the tort (i.e., the collision) and was not dependent upon the presence of physical damage to their cargo caused by the collision. Damage to the ship on which the petitioner's cargo was being carried, thereby causing the petitioner's general average contribution, was held to be sufficient.

(2) The Defendant, Mike Hooks, Inc., knew of the existence of the pipeline, having in its possession at the time of the accident a map showing its exact location. Therefore, the Defendant could reasonably be expected to foresee that damage to the pipeline would result in losses and damages to persons other than the pipeline owner. The application of the *Robins* decision by the Fifth Circuit in the present case serves no interest save that of the negligent tort feasor. It protects him from the full responsibility of his tortuous conduct, the result of which he could clearly foresee, while penalizing the innocent party whose loss results directly from such conduct. Such a result is inequitable and totally in conflict with the decision of this court in *Cuzco*, supra. The present case requires this court to express itself on the important question of the extent to which the *Robins* decision should be applied.

Respectfully submitted,

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CERTIFICATE

This is to certify that three (3) copies of the above and foregoing petition for a writ of certiorari have been mailed this day, postage prepaid, to Mr. Frank M. Brame, Attorney at Law, 520 Weber Building, Lake Charles, Louisiana 70601, attorney for Mike Hooks, Inc. et al.

New Orleans, Louisiana, this ____ day of May, 1975.

DONALD J. BRANNAN

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 74-1952

AMOCO PRODUCTION COMPANY,
Plaintiff-Appellant,

versus

MIKE HOOKS, INC., et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana

---

(March 7, 1975)

Before: GOLDBERG and RONEY, Circuit Judges, and GROOMS, District Judge.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

Costs are taxed against the plaintiff-appellant.

---

1 See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F.2d 966.
Issued as Mandate:

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 74-1868

ASTRAL OIL COMPANY, INCORPORATED,
Plaintiff-Appellant,

versus

MIKE HOOKS, INC., ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana

---

(March 7, 1975)

Before: GOLDBERG and RONEY, Circuit Judges, and GROOMS, District Judge.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

Costs are taxed against the plaintiff-appellant.

---

1 See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F.2d 966.
Issued as Mandate:

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 74-1952

AMOCO PRODUCTION COMPANY,
Plaintiff-Appellant,

versus

MIKE HOOKS, INC., ET AL,
Defendants-Appellees.

No. 74-1868

AUSTRAL OIL COMPANY, INCORPORATED,
Plaintiff-Appellant,

versus

MIKE HOOKS, INC., ET AL,
Defendants-Appellees.

Appeal from the United States District Court for the
Western District of Louisiana

ON PETITION FOR REHEARING

(April 9, 1975)

Before: GOLDBERG and RONEY, Circuit Judges and GROOMS, District Judge.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered causes be and the same is hereby DENIED.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

CIVIL ACTION NO. 18,870

AMOCO PRODUCTION COMPANY

versus

MIKE HOOKS, INC. and ARGONAUT-SOUTHWEST INSURANCE COMPANY

Third Party Defendants:
CITIES SERVICE OIL COMPANY.

CANADIAN UNIVERSAL INSURANCE COMPANY,
UNIGARD MUTUAL INSURANCE COMPANY OF
SEATTLE, WASHINGTON,
UNDERWRITERS AT LLOYD'S, LONDON

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HUNTER, JUDGE:

MEMORANDUM RULING
ON DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT

The facts are relatively simple and undisputed:

1. Plaintiff, Amoco, owned producing natural gas wells (Article VI of complaint).

2. Amoco owned or had an interest in natural gas processing plants (Article V of complaint).

3. These natural gas processing plants processed natural gas from plaintiff's wells, removing the liquefiable hydrocarbons.

4. Amoco had contracted the liquefiable hydrocarbons to Cities Service, delivery being made to the pipeline at the tailgate of plaintiff's natural gas processing plants (Article VII of complaint).

5. The pipeline was owned by Cities Service Oil.

6. On November 19, 1972, a dredge owned by Mike Hooks, Inc., accidentally struck and ruptured the pipeline.

7. The liquefiable hydrocarbons (raw mix) could not be delivered to Cities Service because of the fracture of Cities Service pipeline.

8. The gas processing plants were forced to shut down until the pipeline was repaired because they could not process gas without having an outlet for the liquefiable hydrocarbons.

9. Because they were unable to process their own gas they had to sell it an unprocessed gas, this resulted in a loss of profit — which is the basis of this suit.

Defendants seek summary judgment. The heart of the motion is that plaintiff's claim is for consequential damages which are not recoverable. We agree, and grant the motion.

The basic law was enunciated by the United States Supreme Court in Robins Dry Dock & Repair Co. v. Flint, 275 U.S. 303 (1927):

> "No authority need be cited to show that, as a general rule, at least, a tort to the person or property of the one man does not make the tort feasor liable to another merely because the injured person was under a contract with that other, unknown to the doer of the wrong."

The *Robins* rule has been consistently followed. Aguilines, Inc. v. Eagle Oil & Shipping Co., 153 F.2d 869 (2nd Cir. 1946); Kaiser Aluminum & Chemical Corp. v. Marshland Dredging Co., 455 F.2d 957 (5th Cir. 1972); Forcum-James Co. v. Duke Transportation Co., 231 La. 953, 93 So.2d 228 (1957). *See also* McDermott v. The SS EGERO, 453 F.2d 1202 (5th Cir. 1972).

Kaiser bears striking resemblance. There, defendant's barge dropped an anchor which punctured a pipeline owned by Sugar Bowl Gas Co. This puncture caused immediate interruption of gas fuel service to Kaiser's production plant. Kaiser sought recovery for shutdown expenses and production losses. The Fifth Circuit affirmed the granting of summary judgment, relying primarily on *Robins:*

> "We agree that recovery by Kaiser is precluded as a matter of law because there is (1) no contention that the interference with Kaiser's contract rights was intentional; (2) no evidence that Marshland had knowledge of the existence of the contract between Kaiser and

Sugar Bowl Gas, and (3) no showing of of facts, by affidavit or otherwise, in opposition to the motion for summary judgment, sufficient to create a genuine issue for trial, of anything more than merely the negligent interference with contract rights."

Motion for summary judgment granted. Counsel for defendant is to submit appropriate judgment.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana on this the 29th day of November, 1973.

/s/ EDWIN HUNTER
UNITED STATES DISTRICT JUDGE

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

CIVIL ACTION NO. 19,068

AUSTRAL OIL COMPANY, INCORPORATED

versus

MIKE HOOKS, INC.

and

ARGONAUT-SOUTHWEST
INSURANCE COMPANY

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HUNTER, JUDGE:

MEMORANDUM RULING ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

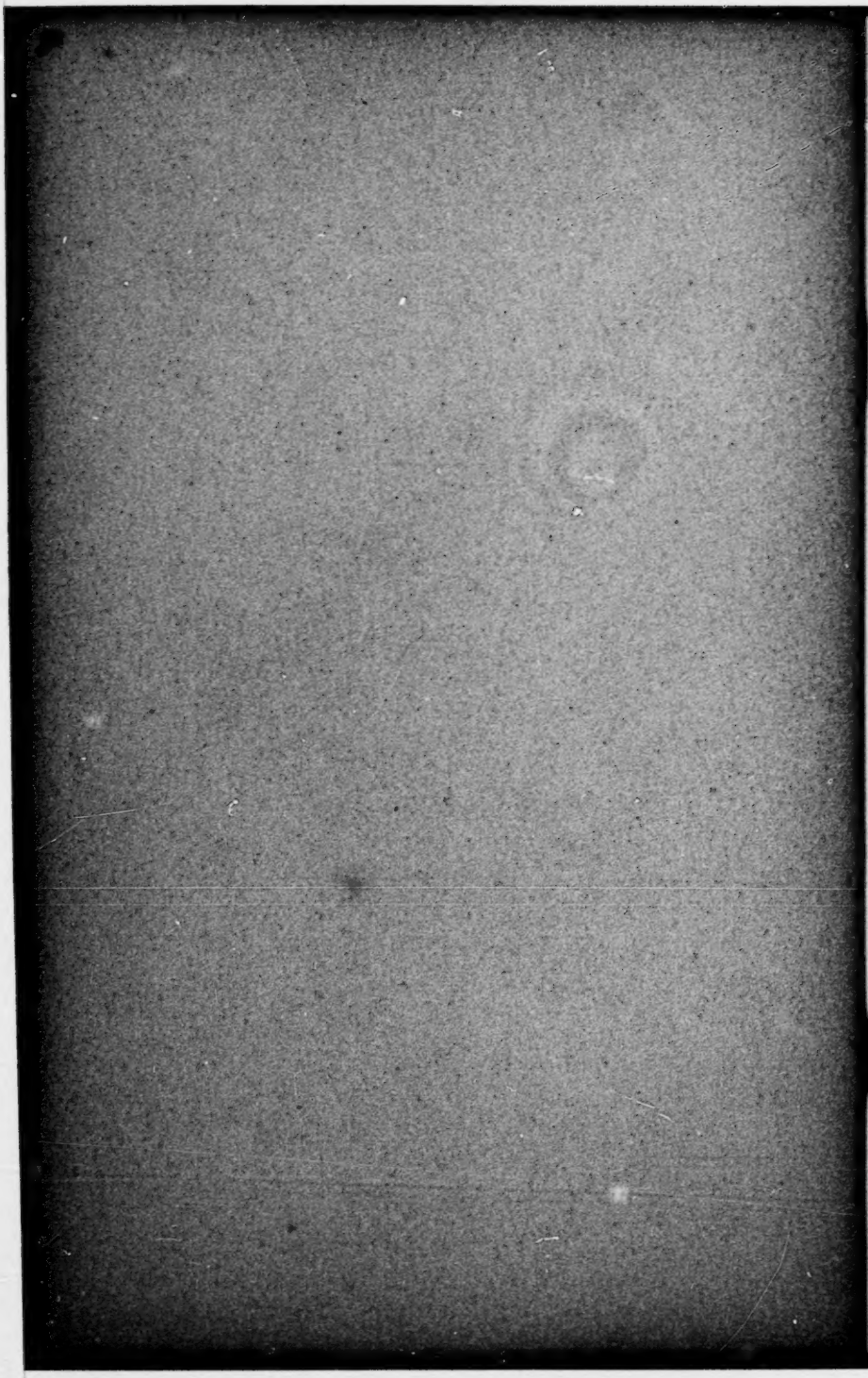
This action cannot be distinguished from the companion case of *Amoco* (No. 18870). For written reasons set forth today in No. 18870, we grant summary judgment here.

A copy of our ruling in 18870 is attached and made a part hereof.

Counsel for defendants are to submit appropriate judgment.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, on this the 29th day of November, 1973.

/s/ EDWIN HUNTER
UNITED STATES DISTRICT JUDGE



COURT, U. S.

Supreme Court, U. S.
FILED
JUN 3 1975
MICHAEL RODAK, JR., CLE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1469

AMOCO PRODUCTION COMPANY,
Petitioner,

versus

MIKE HOOKS, INC., ET AL,
Respondents.

AUSTRAL OIL COMPANY,
Petitioner,

versus

MIKE HOOKS, INC., ET AL,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION

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IN THE
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AMOCO PRODUCTION COMPANY,
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versus

MIKE HOOKS, INC., ET AL,
Respondents.

AUSTRAL OIL COMPANY,
Petitioner,

versus

MIKE HOOKS, INC., ET AL,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION

MAY IT PLEASE THE COURT:

OPINIONS BELOW

The opinions of the United States District Court for the Western District of Louisiana, Lake Charles Divi-

sion, granting respondents' motions for summary judgments are set forth in Appendices "A" and "B".

The per curiam decisions of the United States Court of Appeals for the Fifth Circuit affirming the judgments of the Trial Court are set forth in Appendices "C" and "D".

The per curiam decision of the United States Court of Appeals for the Fifth Circuit denying petitioners' applications for rehearing is set forth in Appendix "E".

JURISDICTION

Counsel for respondents do not question the timely filing of petitioners' application and petitioners' procedure under 28 USC 1254(1).

Petitioners in their application state that federal jurisdiction is based on diversity. Diversity does exist. It is immaterial as to result as to whether the jurisdiction is based on diversity or admiralty as the principle affirmed in *Robins*, infra, is universal in the law of tort.

QUESTION PRESENTED

The question presented is whether a person who has sustained damages stemming from a contract with a person whose person or property has been injured may effect recovery in tort from the person causing the injury when the tort was *not* intentional and the contract was *not* known to the tortfeasor.

STATEMENT OF THE CASE

Before and on November 19, 1972, petitioners owned certain gas wells and gas processing plants at which they processed natural gas owned by them and others to remove therefrom valuable liquefiable hydrocarbons (referred to as "raw mix"), which raw mix was delivered to Cities Service Oil Company under certain fractionating agreements between petitioners and Cities Service via a six inch pipeline owned by Cities Service. The pipeline crossed under the Calcasieu River. By the terms of the fractionating agreements the title and custody of the raw mix became vested in Cities Service at the tailgate of petitioners' processing plants.

On or about November 19, 1972, the dredge, The Galveston, owned and operated by respondent, Mike Hooks, Inc., was engaged in dredging the Calcasieu River and Pass Ship Channel in accordance with a contract between it and the Department of Army Corps of Engineers. While engaged in the dredging operations, The Galveston cut Cities Service's pipeline. For damages petitioners aver that the cutting of the pipeline prevented them for the period the pipeline was under repair from delivering the raw mix to Cities Service and because of no outlet than Cities Service for the raw mix, petitioners were unable to process the natural gas and had to sell the natural gas unprocessed to their customers.

The affidavits filed by respondents in support of their motions for summary judgments reflected that Mike Hooks, Inc. did not intentionally cut the pipeline owned by Cities Service and further did not know of

the existence of the agreements between petitioners and Cities Service.

In essence, respondent Mike Hooks, Inc., a tort feasor, unintentionally cut the pipeline owned by Cities Service which resulted in damages to the petitioners because they were under a contract with Cities Service, unknown, to respondent Mike Hooks, Inc.

ARGUMENT

Your Honors in *Robins Dry Dock & Repair Co. v. Flint*, 275 U.S. 302, 48 S.Ct. 134, 73 L.Ed. 290, answered the question presented herein. In *Robins*, the charterer of a vessel brought an action against the repair company, which had a contract with the owner to repair the vessel; while the vessel was being repaired, the propeller was damaged and a delay occurred in returning the vessel to the time charterer; the time charterer filed suit against the repair company claiming loss of profits because of the delay. Your Honors speaking through Justice Holmes, in reversing the decision below, stated:

> "In accordance with these terms the vessel was delivered to the petitioner and docked, and while there, the propeller was so injured by the petitioner's negligence that a new one had to be put in, thus causing the delay for which this suit is brought."

* * *

"Of course the contract of the petitioner with the owners imposed no immediate obligation upon the petitioner to third persons as we already have said, and whether the petitioner performed it promptly or with negligent delay was the business of the owners and of nobody else. But as there was a tortious damage to a chattel it is sought to connect the claim of the respondents with that in some way. The damage was material to them only as it caused the delay in making the repairs, and that delay would be a wrong to no one except for the petitioner's contract with the owners. The injury to the propeller was no wrong to the respondents but only to those to whom it belonged. But suppose that the respondents' loss flowed directly from that source. Their loss arose only through their contract with the owners — *and while intentionally to bring about a breach of contract may give rise to a cause of action, Angle v. Chicago, St. P.M.&O.R. Co., 151 U.S. 1, 38 L.Ed. 55, 15 Sup. Ct. Rep. 240, no authority need be cited to show that, as a general rule, at least, a tort to the person or property of one man does not make the tort-feasor liable to another merely because the injured person was under a contract with that other, unknown to the doer of the wrong. See National Sav. Bank v. Ward, 100 U.S. 195, 25 L.Ed. 621. The law does not spread its protection so far.*" (Italics ours)

The United States Court of Appeals for the Fifth Circuit in *Kaiser Aluminum & Chem. Corp. v. Marshland Dreding Company*, 455 F.2d 957 (5th Cir. — 1972) direct-

ly applied the principle enunciated in *Robins*, supra, that consequential damages are not recoverable in a negligence action. In *Kaiser* the defendant's barge dropped an anchor which punctured a pipeline owned by Sugar Bowl Gas Company. This puncture stopped the flow of fuel gas to Kaiser's production plant, and Kaiser brought suit for shut down expenses and production losses. In *Kaiser*, supra, the Court, in affirming the granting of the summary judgment by the Trial Court, stated:

> "In granting summary judgment, the trial judge relied primarily on Robins Dry Dock & Repair Co. v. Flint, 1927, 275 U.S. 302, 48 S.Ct. 134, 72 L.Ed. 290, that 'as a general rule, * * * a tort to the person or property of one man does not make the tort-feasor liable to another merely because the injured person was under contract with that other unknown to the doer of the wrong.' 275 U.S. at 309, 48 S.Ct. at 135.
>
> (2) We agree that recovery by Kaiser is precluded as a matter of law because there is (1) no contention that the interference with Kaiser's contract rights was intentional; (2) no evidence that Marshland had knowledge of the existence of the contract between Kaiser and Sugar Bowl Gas, and (3) no showing of facts by affidavit or otherwise, in opposition to the motion for summary judgment, sufficient to create a genuine issue for trial, of anything more than merely the negligent interference with contract rights. See Fed.R.Civ.P. 56(e)."

The Louisiana Supreme Court in *Forcum-James Company, Inc. v. Duke Transportation Company, et al*, 231 La. 953, 93 So.2d 228 (1957), a non-admiralty case, applying the substantive law of the State of Louisiana, affirmed the well established principle of the law of torts that consequential damages are not allowed. In *Forcum-James*, the plaintiff, a construction company, was under contract to the State of Louisiana to maintain a temporary bridge in safe condition until it had completed construction of a permanent bridge; the temporary bridge collapsed under the weight of an overloaded truck owned by the defendant; the plaintiff brought suit against the truck owner to recover the amount which it had spent to repair the bridge in accordance with its contract with the state. The Louisiana Supreme Court, in finding that the damaged bridge belonged to the Louisiana Department of Highways, stated as follows in denying plaintiff's claims:

> "(2) This postulate cannot be maintained. It is a basic principle of law that a tort-feasor is responsible only for the direct and proximate result of his acts and that, where a third person suffers damage by reason of a contractual obligation to the injured party, such damage is too remote and indirect to become the subject of a direct action ex delicto, in the absence of subrogation. See Foret v. Board of Levee Comm'rs of Orleans Levee Dist., 169 La. 427, 125 So. 437, citing among other authorities, Sutherland on Damages, Vol. I, p. 127. And see also D. R. Carroll & Co. v. New Orleans, J. & G.N.R. Co., 26 La. Ann. 447."

A storybook example of the principle affirmed in *Robins*, supra, is the recent decision of the Court of Appeal of Louisiana, Fourth Circuit in *Messina v. Sheraton Corporation of America*, 291 So.2d 829 (1974). In *Messina*, the plaintiff, a boxing promoter, brought a suit for damages against defendant, the owner of a hotel, in which hotel a boxer under contract to the plaintiff was staying; the boxer was injured when a defective venetian blind collapsed, causing him injuries which prevented him from fulfilling his boxing engagement; plaintiff claimed loss of profits under his contract with the boxer. The trial Court sustained an exception of no right of action filed by the defendants. The Court of Appeal, Fourth Circuit, after citing *Robins*, supra, with approval stated:

> "It is clear from the jurisprudence that recovery is allowed when an intentional tort has been committed; however, plaintiff has cited no authority nor can we find any, which allows recovery in a case such as the instant one absent intentional injury.
>
> Under the circumstances of this case, plaintiff clearly failed to state a right of action. Accordingly, we fail to find error in the trial court's judgment maintaining the exception of no right of action. The judgment is affirmed."

The hotel (Mike Hooks, Inc.) through its negligence unintentionally injured the boxer (Cities Service) who had a contract with the boxer's manager (Amoco and Austral) unknown to the hotel (Mike Hooks, Inc.).

Petitioners in their application cite three cases which they state are in conflict with *Robins*, supra. These cases are: *Carbone v. Ursich, The Del Rio*, 209 F.2d 178 (9th Cir. — 1953); *Union Oil Co. v. Oppen*, 501 F.2d 558 (9th Cir. — 1974); *Aktieselskabet Cuzco v. The Sucarseco, et al*, 294 U.S. 394, 55 S.Ct. 467, 79 L.Ed. 942 (1935).

First, let us look at *Aktieselskabet Cuzco*. Petitioners claim that this Court rejected the rule of *Robins* in *Aktieselskabet Cuzco*. This Court did not do so; as a matter of fact, it affirmed the rule of *Robins*. Your Honors stated:

> "The only question presented here is with respect to the claim of the cargo owners. Their right to recover against the Sucarseco, the non-carrying vessel, is not contested so far as the physical damage to the cargo is concerned. The contest is with respect to the contributions of the cargo owners in general average. The Circuit Court of Appeals, reversing the District Court, allowed that recovery. 72 F. (2d) 690. Because of the importance of the question, which has not been decided by this Court, a writ of certiorari was granted, December 3, 1934."
>
> * * *
>
> "This is not a case of an attempt, by reason of 'a tort to the person or property of one man,' to make the tortfeasor liable to another 'merely because the injured person was under a con-

tract with that other, unknown to the doer of the wrong.' See Robins Dry Dock & Repair Co. v. Flint, 275 U.S. 303, 309, 72 L.Ed. 290, 292, 48 S.Ct. 134; Elliott Steam Tug Co. v. The Shipping Controller (1922) 1 K.B. 127, 139, 142-C.A.; The Federal No. 2 (C.C.A. 2d) 21 F. (2d) 313. Here, cargo as well as ship was placed in jeopardy. That jeopardy was due in part to the negligence of the vessel against which the claim is made.

*(405)

The fact that the vessel *and the cargo under the 'Jason clause' bear their proportionate shares of the expenses gives Sucarseco no ground for a contention that the expenses themselves, or the share that cargo bears, were not occasioned directly by the tort. In the light of the nature of the general average contributions, and of the event which made them necessary, the fact that they were made under the stipulation in the 'Jason clause' is no more a defense to Sucarseco than is the fact that the cargo was placed on board under a contract to carry it. Indeed, Sucarseco makes no contention of immunity. The question arises only because, through recovery by the cargo owners from Sucarseco, Toluma's share of the ultimate division is affected. But that does not establish remoteness. We have the anomalous situation that it is Toluma that is opposing the cargo owners' claim against Sucarseco, while Toluma has collected from cargo its share of the general average expenses on the ground

> that they were incurred on cargo's behalf and were due to the collision.
>
> As we have said, the 'Jason clause' merely distributed a loss for which Sucarseco was responsible and in that view the cargo owners are entitled to recover that part of the loss which they have sustained."

Next we turn to *Carbone*, supra. Therein the Ninth Circuit fully discussed *Robins*, supra, and held that Justice Holmes did not intend that the principle affirmed therein would apply to fishermen who claimed their loss of profits resulting from the damage to the vessel on which they were working. The Ninth Circuit stated:

> It is quite evident that the court, although dealing with a well established rule of law of torts, was not thinking of the special situation of the fishermen who, as we have here indicated, had long been recognized as beneficiaries under a special rule which made the wrongdoer liable not only for the damage done to the fishing vessel, but liable for the losses of the fishermen as well. This long recognized rule is no doubt a manifestation of the familiar principle that seamen are the favorites of admiralty and their economic interests entitled to the fullest possible legal protection. These considerations have given rise to a special right comparable to that of a master to sue for the loss of services of his servant, or the right of a husband or father to sue for the loss of services of wife or child.

The Ninth Circuit recognized the "well established rule of law of torts" applied in *Robins*, supra, but excepted seamen from its application because "seamen are the favorites of the admiralty and their economic interests entitled to the fullest legal protection".

The last case cited by petitioners is *Union Oil Co.*, supra. Again *Union Oil Co.* is a suit by commercial fishermen for damages against Union Oil Co. arising out of the Santa Barbara oil spill of 1969; the fishermen claimed that the large quantities of raw crude oil released by Union damaged the waters in which they fished resulting in financial loss to them.

In *Union Oil Co.* there is no mention of contracts. The chief question presented was whether a cause of action had been stated against Union whose negligence prevented the fishermen from obtaining a prospective pecuniary advantage. The Ninth Circuit discussed and affirmed the principle established in *Robins*, supra. The Ninth Circuit holding that the plaintiffs had stated a cause of action, said:

> Finally, it must be understood that our holding in this case does not open the door to claims that may be asserted by those, other than commercial fishermen, whose economic or personal affairs were discommoded by the oil spill of January 28, 1969. The general rule urged upon us by defendants has a legitimate sphere within which to operate. Nothing said in this opinion is intended to suggest, for example, that every decline in the general commercial activity of every business in the Santa Barbara area following the occurrences of

> 1969 constitutes a legally cognizable injury for which the defendants may be responsible. The plaintiffs in the present action lawfully and directly make use of a resource of the sea, *viz.* its fish, in the ordinary course of their business. This type of use is entitled to protection from negligent conduct by the defendants in their drilling operations. Both the plaintiffs and defendants conduct their business operations away from land and in, on and under the sea. Both must carry on their commercial enterprises in a reasonably prudent manner. Neither should be permitted negligently to inflict commercial injury on the other. We decide no more than this.

Thus it can be seen in *Union Oil Co.* the sole and primary question was whether Union Oil Company had negligently invaded the rights of the plaintiff fishermen.

Established authorities in the field of torts recognize the principle of *Robins*, supra. Wex S. Malone, Professor of Law, Louisiana State University, in commenting on the universality of the rule on negligent interference with contract in 18 Louisiana Law Review 67 (1957) stated:

> "Where, however, the third person is not motivated by desire to bring about a breach of contract, or where he acts without knowledge of the contract recovery is generally denied everywhere. Similarly when the conduct of the third person consists merely of some

negligent act which increases the burden of plaintiff's contract or which in some way lessens the benefit of the agreement to the plaintiff, recovery is universally denied."

William L. Prosser, in the Third Edition (1965) of his well known work "The Law of Torts" stated with reference to interference with contractual relations:

(Pages 962-964)

"Interference with contract, which had its modern inception in 'malice,' has remained almost entirely an intentional tort; and in general, liability has not been extended to the various forms of negligence by which performance of a contract may be prevented or rendered more burdensome. * * * Thus there has been very general refusal to extend it to injuries disabling other persons who are under contract to plaintiff, but are not classified as servants, such as soldiers, policemen, and even civil servants. Recovery has also been denied for other damages than the value of the services themselves, as for example payments which the employer is compelled by contract to make to his injured employee, or an increased workmen's compensation insurance premium resulting from the injury. Now and then there have been courts which have expressed doubt as to whether such an action should be permitted at all.

Likewise insurance companies have been denied recovery for losses due to negligent injury to persons or property which they have insured. Any remedy in such cases must be through subrogation to the claim of the person directly injured. On the same basis, there is no action against one who negligently sinks a barge which the plaintiff has contracted to tow, or destroys goods which he has contracted to buy, or breaks the machinery of another who is furnishing him with power, or pollutes the stream from which a city is supplying him with water, or kills a person with whom he has a contract for his support, or, as an agent, negligently fails to see that his principal's contract is performed. And when it is the plaintiff himself who suffers personal injury, his loss of contracts may be admitted in evidence only as bearing upon the value of his lost time, or diminished earning capacity."

CONCLUSION

I.

The United States District Court for the Western District of Louisiana, Lake Charles Division, and the United States Court of Appeals for the Fifth Circuit were correct in respectively granting and affirming the defendants' motions for summary judgments on the basis that "a tort to the person or property of one man does not make the tort-feasor liable to another merely because the injured person was under contract with that other unknown to the doer of the wrong."

II.

We respectfully ask for the foregoing reasons that the decision of the United States Court of Appeals for the Fifth Circuit be affirmed and that accordingly petitioners' application for a writ of certiorari to this Court be denied.

Respectfully submitted,

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CERTIFICATE

I, the undersigned member of the Bar of this Honorable Court, do hereby certify that I have this day served upon each attorney for the petitioners herein, Edmund E. Woodley, P. O. Drawer EE, Lake Charles, Louisiana 70601, attorney for petitioner, Austral Oil Company and Donald J. Brannan, P. O. Box 50879, New Orleans, Louisiana 70150, attorney for petitioner, Amoco Production Company, three copies of the foregoing opposition brief of respondents by mailing the same to each of the said attorneys of record at Lake Charles, Louisiana this ____ day of June, 1975.

FRANK M. BRAME

APPENDIX "A"

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

CIVIL ACTION NO. 18,870

AMOCO PRODUCTION COMPANY

versus

MIKE HOOKS, INC. and ARGONAUT-SOUTHWEST INSURANCE COMPANY

Third Party Defendants:
CITIES SERVICE OIL COMPANY,
CANADIAN UNIVERSAL INSURANCE COMPANY,
UNIGARD MUTUAL INSURANCE COMPANY OF SEATTLE, WASHINGTON,
UNDERWRITERS AT LLOYD'S, LONDON

FOR PLAINTIFF
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FOR DEFENDANTS
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Frank M. Brame
P.O. Box 1844
Lake Charles, Louisiana

HUNTER, JUDGE:

MEMORANDUM RULING
ON DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT

The facts are relatively simple and undisputed:

1. Plaintiff, Amoco, owned producing natural gas wells (Article VI of complaint).

2. Amoco owned or had an interest in natural gas processing plants (Article V of complaint).

3. These natural gas processing plants processed natural gas from plaintiff's wells, removing the liquefiable hydrocarbons.

4. Amoco had contracted the liquefiable hydrocarbons to Cities Service, delivery being made to the pipeline at the tailgate of plaintiff's natural gas processing plants (Article VII of complaint).

5. The pipeline was owned by Cities Service Oil.

6. On November 19, 1972, a dredge owned by Mike Hooks, Inc., accidentally struck and ruptured the pipeline.

7. The liquefiable hydrocarbons (raw mix) could not be delivered to Cities Service because of the fracture of Cities Service pipeline.

8. The gas processing plants were forced to shut down until the pipeline was repaired because they could not process gas without having an outlet for the liquefiable hydrocarbons.

9. Because they were unable to process their own gas they had to sell it an unprocessed gas, this resulted in a loss of profit — which is the basis of this suit.

Defendants seek summary judgment. The heart of the motion is that plaintiff's claim is for consequential damages which are not recoverable. We agree, and grant the motion.

The basic law was enunciated by the United States Supreme Court in Robins Dry Dock & Repair Co. v. Flint, 275 U.S. 303 (1927):

> "No authority need be cited to show that, as a general rule, at least, a tort to the person or property of the one man does not make the tort feasor liable to another merely because the injured person was under a contract with that other, unknown to the doer of the wrong."

The *Robins* rule has been consistently followed. Aguilines, Inc. v. Eagle Oil & Shipping Co., 153 F.2d 869 (2nd Cir. 1946); Kaiser Aluminum & Chemical Corp. v. Marshland Dredging Co., 455 F.2d 957 (5th Cir. 1972); Forcum-James Co. v. Duke Transportation Co., 231 La. 953, 93 So.2d 228 (1957). *See also* McDermott v. The SS EGERO, 453 F.2d 1202 (5th Cir. 1972).

Kaiser bears striking resemblance. There, defendant's barge dropped an anchor which punctured a pipeline owned by Sugar Bowl Gas Co. This puncture caused immediate interruption of gas fuel service to Kaiser's production plant. Kaiser sought recovery for shutdown expenses and production losses. The Fifth Circuit affirmed the granting of summary judgment, relying primarily on *Robins:*

> "We agree that recovery by Kaiser is precluded as a matter of law because there is (1) no contention that the interference with Kaiser's contract rights was intentional; (2) no evidence that Marshland had knowledge of the existence of the contract between Kaiser and Sugar Bowl Gas, and (3) no showing of of facts, by affidavit or otherwise, in opposition to the motion for summary judgment, sufficient to create a genuine issue for trial, of anything more than merely the negligent interference with contract rights."

Motion for summary judgment granted. Counsel for defendant is to submit appropriate judgment.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana on this the 29th day of November, 1973.

/s/ EDWIN HUNTER
UNITED STATES DISTRICT
JUDGE

APPENDIX "B"

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

CIVIL ACTION NO. 19,068

AUSTRAL OIL COMPANY, INCORPORATED

versus

MIKE HOOKS, INC.

and

ARGONAUT-SOUTHWEST
INSURANCE COMPANY

FOR PLAINTIFF
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Lake Charles, Louisiana 70601

Joseph H. Stephens
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FOR DEFENDANTS
Frank M. Brame
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Lake Charles, Louisiana

HUNTER, JUDGE:

MEMORANDUM RULING ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

This action cannot be distinguished from the companion case of *Amoco* (No. 18870). For written reasons set forth today in No. 18870, we grant summary judgment here.

A copy of our ruling in 18870 is attached and made a part hereof.

Counsel for defendants are to submit appropriate judgment.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, on this the 29th day of November, 1973.

/s/ EDWIN HUNTER
UNITED STATES DISTRICT JUDGE

APPENDIX "C"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 74-1952

AMOCO PRODUCTION COMPANY,
Plaintiff-Appellant,

versus

MIKE HOOKS, INC., et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana

---

(March 7, 1975)

Before: Goldberg and RONEY, Circuit Judges, and GROOMS, District Judge.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

Costs are taxed against the plaintiff-appellant.

---

1 See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F.2d 966.
Issued as Mandate:

APPENDIX "D"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 74-1868

AUSTRAL OIL COMPANY, INCORPORATED,
Plaintiff-Appellant,

versus

MIKE HOOKS, INC., ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana

(March 7, 1975)

Before: GOLDBERG and RONEY, Circuit Judges, and GROOMS, District Judge.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

Costs are taxed against the plaintiff-appellant.

1 See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F.2d 966.
Issued as Mandate:

APPENDIX "E"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 74-1952

AMOCO PRODUCTION COMPANY,
Plaintiff-Appellant.

versus

MIKE HOOKS, INC., ET AL,
Defendants-Appellees.

No. 74-1868

AUSTRAL OIL COMPANY, INCORPORATED.
Plaintiff-Appellant.

versus

MIKE HOOKS, INC., ET AL,
Defendants-Appellees.

Appeal from the United States District Court for the
Western District of Louisiana

ON PETITION FOR REHEARING

(April 9, 1975)

Before: GOLDBERG and RONEY, Circuit Judges and GROOMS, District Judge.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered causes be and the same is hereby DENIED.